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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
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Market Entry and Regulation of)
Foreign-affiliated Entities)
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IB Docket No. 95-22
RM-8355
RM-8392

COMMENTS OF K&S INTERNATIONAL COMMUNICATIONS, INC.

K&S International Communications, Inc. ("K&S"), by its undersigned counsel, hereby submits these Comments pursuant to the Commission's *Notice of Proposed Rulemaking* ("NPRM") adopted on February 7, 1995, in the above captioned matter. K&S commends the Commission for acknowledging the need to increase business opportunities for U.S. carriers in foreign telecommunications markets and to promote the advent of a competitive global marketplace. As a new entrant in the international telecommunications market, K&S believes strongly that the Commission should adopt international policies that will allow U.S. companies to capitalize on niche market opportunities created by foreign telecommunications administrations, as they incrementally introduce competition in their respective markets.

Consistent with this view, K&S urges the Commission to permit U.S. carriers, such as K&S, to provide foreign private carriers private line service interconnected to the U.S. public switched network ("PSN"), provided that (1) the foreign telecommunications administration has established a timetable for the introduction of facilities-based competition in its market; (2) the foreign administration does not permit the private carrier's traffic to interconnect with the PSN in its home market; and (3) the private foreign carrier is not affiliated with a monopoly or

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dominant carrier in its home market. K&S submits that under these circumstances the overall competitive impact of allowing private foreign carriers to interconnect private lines to the PSN is consistent with the Commission's "equivalent opportunities" policy, promotes competition among U.S.-based international carriers, and promotes global competition. Any potential adverse impact on the settlements deficit is negligible when compared to the benefits of lower prices, greater choices and higher service quality that will accrue to consumers.

I. INTRODUCTION AND STATEMENT OF INTEREST

K&S, a corporation organized under the laws of the State of Florida, provides satellite-based international telecommunication services between the United States and various international points and Mexico and Canada.^{1/} As a new entrant in the international telecommunications market, K&S has a vital interest in Commission policies that will create new market opportunities for U.S.-based international carriers.

II. THE COMMISSION'S INTERNATIONAL POLICIES SHOULD NOT PROHIBIT U.S.-BASED INTERNATIONAL CARRIERS FROM PARTICIPATING IN NICHE MARKETS CREATED BY FOREIGN ADMINISTRATIONS AS THEY INTRODUCE COMPETITION TO THEIR MARKETS.

A. K&S Concurs with the Commission's Goal of Promoting Global Competition

K&S concurs with the Commission's view that achieving its primary goal of promoting competition in the global telecommunications marketplace will require policies that prevent (1)

^{1/} *K&S International Communications, Inc.*, I-T-C-94-506, DA 94-1413 (released Dec. 15, 1994).

anticompetitive behavior in the provision of international services and facilities; and (2) encourage foreign governments to open their telecommunications markets.

As part of its effort to encourage the opening of foreign telecommunication markets, the Commission proposes to leverage foreign companies' desire to enter the lucrative U.S. market by establishing an "effective market access" standard. The Commission proposes to define the "effective market access" "as the ability for U.S. carriers . . . to provide basic, international telecommunications facilities-based services in the primary markets served by the foreign carrier seeking entry."^{2/} The Commission sets forth several factors to determine whether effective market access exists, including the presence of competitive safeguards, transparent rates and charges for interconnection, and the availability of substantially similar services of the home market to U.S. carriers. Additionally, the Commission proposes to consider certain public interest factors, including the state of liberalization in the foreign carrier's home market.

K&S supports completely the Commission's overall strategy for pressuring foreign countries to open their telecommunications markets to competition and the overall goal of facilities-based competition embodied in the effective market access definition. Nevertheless, K&S submits that the Commission must not and need not wait for "effective market access" as defined in the *NPRM* to permit U.S. carriers to participate in niche markets created as foreign administrations move towards liberalization. The public interest mandates that the Commission scrutinize individual international policy decisions, particularly its application of the "equivalent opportunities" policy, to ensure consistency with its overall pro-competition goals^{3/} and safeguard

^{2/} *NPRM* ¶ 40. The Commission classifies a primary market as "one where a carrier has a significant facilities-based presence. *Id.*

^{3/} See Regulation of International Accounting Rates, *Order*, 7 FCC Rcd 559 (1992) ("*International Resale Order*").

consumer interests in high-quality, lower-priced international telecommunications services. Specifically, K&S believes that requiring private foreign carriers that seek to interconnect private lines to the U.S. PSN to demonstrate "equivalent opportunities" as part of a Section 214 application undermines the Commission's goal of opening foreign markets to U.S. carriers and promoting global competition.

1. *Applying the "Equivalent Opportunities" Policy to Foreign Private Carriers Under Certain Circumstances Undermines the Commission's Stated Pro-Competition Goals.*

As part of their phased liberalization programs, many foreign markets, such as Colombia, with existing monopoly or dominant service providers, have created niche markets for domestic carriers to provide basic telecommunications service within their markets on a private carriage basis -- *i.e.*, the private carriers are prohibited from routing their traffic over the PSN of their home market. Adoption of such policies is clearly a positive step towards the introduction of competition in these domestic markets. This nominal step towards liberalization creates niche market opportunities for domestic entrepreneurs to develop the managerial, financial and technical provisioning skills necessary to compete effectively with the dominant or monopoly carrier in the domestic and international markets.

Significantly, this first step towards introducing competition also creates niche market opportunities for U.S. carriers, particularly new small carriers, interested in targeting their nascent international operations to discrete countries in the process of liberalizing their markets. In liberalizing markets such as Colombia, for example, the private carriers typically function as resellers do in the U.S. The private carriers aggregate the traffic of medium- to large-size businesses with numerous domestic locations and substantial traffic (though not enough to justify

individually a private network) and create private networks that reduce the cost of their domestic telecommunications services.

Unfortunately, because of the Commission's policy prohibiting carriers (private or otherwise) from interconnecting private lines to the PSN, both new U.S.-based carrier like K&S, and a Colombian private carrier are foreclosed from servicing this niche business user market via private lines to the U.S. unless the Commission finds that the specific country offers equivalent opportunities to U.S. carriers, to resell private lines from its market. It is noteworthy that under the Commission's current rules, if the same business customers of the private carrier organized themselves and shared the cost of paying an agent to provide the services of the private carrier, they would be permitted to interconnect their private lines to the U.S. PSN. Under the Commission's rules, this arrangement is permissible because the U.S. carrier providing the private line would be interconnecting the end users and not a carrier.

Under the current policy, a private carrier in Colombia is constrained by the correspondent-agreement model of international regulation and must enter into a correspondent agreement with a U.S. carrier, such as K&S, to offer its end-user customers Colombia-U.S. international service. Thus, the private carrier could not take advantage of any economies of aggregation since, under the uniform accounting rate policy, it would be bound to the same above-cost accounting rate that the Commission policy seeks to reduce.

Moreover, because it would not likely be economical for most of the small and medium-size businesses to purchase a private line for their individual use, U.S. international policy in this instance impedes competition instead of creating an opportunity to grow a business out of the economies gained from aggregation of traffic. Both the U.S.-based and the foreign carrier are simply excluded from this market segment. Instead, the traffic that would be diverted from the

dominant and monopoly carrier to the entrepreneurs remains with the large dominant and monopoly carriers in the U.S. and abroad -- carriers that control the international market and have little incentive to reduce their collection accounting rate. Thus, the Commission's singular accomplishment in requiring an equivalent opportunities demonstration prior to allowing private foreign carriers to interconnect with the U.S. PSN is to preserve the traffic revenues of the large established carriers. This result is contrary to the public interest and the Commission's express goal in this proceeding to promote competition in international markets.

2. *Allowing Private Foreign Carriers to Interconnect Private Lines to the U.S. PSN is Consistent with the Commission's Pro-competition Goals*

The Commission seeks comment on whether it should modify its equivalency requirement in light of its proposals governing market access standards for facilities-based carriers. Specifically, the Commission seeks comment on whether it should utilize a consistent approach to determining equivalency and effective market access. K&S believes strongly that the Commission should modify its effective market access evaluation and adopt policies that allow a measured, flexible response to foreign carrier initiatives to introduce competition in their home markets. In other words, the Commission should permit U.S. carriers to interconnect the private lines of private foreign carriers with the U.S. PSN in those circumstances where:

- (1) the foreign country has established a timetable for the introduction of facilities-based competition in its home market;
- (2) the foreign country does not permit the private carrier's traffic to interconnect with the PSN of the foreign country; and
- (3) the private foreign carrier with which the U.S. carrier will do business is not a monopoly carrier in its home market.

K&S believes that, with these safeguards in place, allowing foreign private carriers to interconnect with the U.S. PSN will not exacerbate the settlements deficit. Indeed, K&S submits that allowing private foreign carriers to interconnect with the PSN under these circumstances is consistent with the Commission's rationale for adopting the equivalent opportunities policy.

The Commission's equivalent opportunities policy is intended to ensure that foreign *monopoly* carriers -- carriers with sufficient market power that can be used to discriminate among U.S. carriers -- do not abuse their monopolistic position to cause competitive harm on U.S. carriers or the U.S. market in the provision of interconnected private line services.^{4/} Further, the equivalent opportunities policy is also designed to address the asymmetric evasion of the international settlements policy by U.S. carriers that exacerbate the settlements deficit.^{5/} Specifically, the Commission permits a U.S. carrier to route switched traffic to a foreign country over private lines only if that foreign country affords that U.S. carrier an equivalent opportunity to do the same -- to route switched traffic to the U.S. over private lines from that foreign country. The Commission reasons that the equivalency requirement will result in a roughly equal diversion of traffic from the PSN of both countries. Because the diversion of traffic occurs on both sides, the existing net U.S. settlements deficit will not be affected adversely. The Commission believes that as a result of the lost revenue from inbound traffic from the U.S. to the private lines, foreign

^{4/} *NPRM* ¶ 77.

^{5/} *International Resale Order*, 7 FCC Rcd at 561. The international settlements policy involves a negotiated accounting rate, typically 50/50, between correspondents on a particular international route that is designed to compensate each correspondent for the cost of terminating an international telex, telegraph or telephone call on the respective facilities. At a designated settlement, the correspondent with the higher number of terminating calls is reimbursed by the foreign correspondent for the difference. *See Regulation of International Accounting Rates, Second Report and Order and Second Further Notice of Proposed Rulemaking*, 7 FCC Rcd 8040 (1992).

administrations will be pressured to lower their collection and accounting rates to attract the private line traffic back to their networks.^{6/} K&S submits that the same rationale applies to the private foreign carrier scenario. By aggregating and routing the traffic of small and medium sized businesses to the U.S. over private lines, the Commission would sanction the diversion of traffic from the above-cost switched network of foreign administrations, thereby providing U.S. consumers that do business with these companies, lower cost, higher quality service, while placing pressure on the foreign administrations to reduce their accounting rates.

While the settlements deficit is a legitimate concern, K&S believes it is accorded too much weight in the formulation of U.S. international regulatory policy given the fact that "country-direct" and other related U.S. inbound service offerings contribute significantly to the traffic imbalance that creates the settlements deficit. To the extent AT&T's country-direct services constitute a significant share of the international market, the settlements deficit is an inaccurate measure of traffic flows between the U.S. and foreign countries. Moreover, applying the equivalent opportunities requirement to private foreign carriers that capitalize on the entrepreneurial opportunities created by liberalization in their home markets actually impedes competition in the U.S. and the foreign markets, rather than advance the Commission's goals. This consequence far outweighs the settlement deficit concerns underlying the Commission's equivalent opportunities policy.

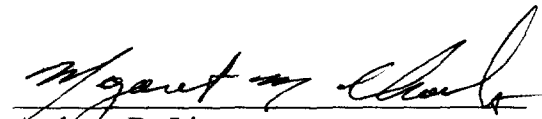
^{6/} *International Resale Order*, 7 FCC Rcd at 560; *fONOROLA Corporation*, I-T-C-91-103, 9 FCC Rcd 4066 (1994).

III. CONCLUSION

For the foregoing reasons, K&S requests the Commission to permit private foreign carriers to interconnect private lines to the U.S. PSN, provided that the private foreign carriers do not route traffic through their domestic PSN. K&S believes strongly that the Commission should permit U.S. carriers to take advantage of niche markets in foreign countries as they are created in the liberalization process. This approach to international policy is not only consistent with the rationale underlying the "equivalent opportunities" policy, and the Commission's overall goal of promoting competition, it will expedite the opening of foreign markets to U.S. carriers.

Respectfully submitted,

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